

IN THE MATTER OF:	:
CONSENT MARKETS, TARIFFS AND RATES - ELECTRIC	:
CONSENT MARKETS, TARIFFS AND RATES - GAS	:
CONSENT ENERGY PROJECTS - HYDRO	:
CONSENT ENERGY PROJECTS - CERTIFICATES	:
DISCUSSION ITEMS	:
STRUCK ITEMS	:

OPEN MEETING

Wednesday, February 9, 2005
10:50 a.m.

1 APPEARANCES:

2 COMMISSIONERS PRESENT:

3 CHAIRMAN PAT WOOD, III, Presiding

4 COMMISSIONER NORA MEAD BROWNELL

5 COMMISSIONER JOSEPH T. KELLIHER

6 COMMISSIONER SUEDEEN G. KELLY

7 SECRETARY MAGALIE R. SALAS

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19 ALSO PRESENT:

20 JANE W. BEACH, Reporter

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P R O C E E D I N G S

(10:50 a.m.)

CHAIRMAN WOOD: This open meeting of the Federal Energy Regulatory Commission will come to order to consider matters which have been duly posted in accordance with the Government in the Sunshine Act for today and for here.

Please start with me and us as we pledge allegiance to the Flag of the United States.

(Pledge of Allegiance recited.)

CHAIRMAN WOOD: All right, I want to welcome everybody today. I'm sorry we're starting a little late, but we had a couple of important Orders that we wanted to keep on the agenda, and appreciate the hard work of not only my colleagues, but all of our wonderful Staff that worked to get so many of these Orders out on time, and hopefully, very readable, and, importantly, defensible in court.

We'll go on to the Secretary.

SECRETARY SALAS: Good morning, Mr. Chairman, and good morning, Commissioners. The following items have been struck from the agenda since the issuance of the Sunshine Notice on February 2nd: E-5, E-35, E-41, E-55; G-1; and H-3.

Your consent agenda for this morning is as follows: Electric Items - E-1, 2, 4, 7, 8, 9, 10, 12, 13, 14, 15, 16, 19, 20, 21, 23, 24, 26, 27, 29, 30, 33, 36, 37,

1 40, 47, 48, 49, 50, 52, 53, 54, 56, 58, 59, 60, 61, and 62.

2 Gas Items: G-2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,
3 and 13.

4 Hydro Items: H-1, 2, 4, and 5.

5 Certificates: C-2, 3, and C-4.

6 As required by law, Commissioner Kelly is recused
7 from the following items on the consent agenda: E-1, E-2,
8 E-24, E-50, G-2, G-13, and H-5.

9 Specific votes for some of the items on the
10 consent agenda are as follows: E-4, Commissioner Kelliher
11 concurring with a separate statement; E-29, Commissioner
12 Kelliher concurring with a separate statement; E-36,
13 Commissioner Kelly dissenting, in part, with a separate
14 statement; E-40, Commissioner Brownell dissenting, in part,
15 with a separate statement; E-62, Commissioner Kelly
16 dissenting, in part, with a separate statement; G-8,
17 Chairman Wood concurring with a separate statement; H-1,
18 Commissioner Kelliher dissenting, in part, with a separate
19 statement.

20 Commissioner Kelly votes first this morning.

21 COMMISSIONER KELLY: With the exception of those
22 cases from which I am recused, and the cases, two cases in
23 which I am dissenting, in part, with a separate statement, I
24 vote aye.

25 COMMISSIONER BROWNELL: Aye, noting my partial

1 dissent on E-40.

2 COMMISSIONER KELLIHER: Aye, noting my partial
3 dissent on H-1.

4 CHAIRMAN WOOD: Aye, voting aye, with my
5 concurrence on G-8.

6 SECRETARY SALAS: Mr. Chairman and Commissioners,
7 before we proceed to the discussion items, I understand that
8 we have an addition to today's open meeting agenda.

9 Specifically, you wish to add an agenda item
10 entitled Supplement to Policy Statement on Matters Related
11 to Bulk Power System Reliability, under Docket Number PL04-
12 5-001.

13 To do this, I need to ask you to vote on whether
14 to waive the Government in the Sunshine Act provisions
15 requiring the Commission to give seven-day notice of matters
16 to be considered in open meeting. May I please have your
17 votes, for the record, please.

18 COMMISSIONER KELLY: I vote in favor of waiver.

19 COMMISSIONER BROWNELL: Aye.

20 COMMISSIONER KELLIHER: Aye.

21 CHAIRMAN WOOD: Aye.

22 But before we talk about that item, Commissioner
23 Brownell has asked to make a few remarks.

24 COMMISSIONER BROWNELL: Yes, thank you. We voted
25 this morning to approve a settlement between Douglas County

1 and the Coleville Tribe, and wanted to welcome the members
2 of the Coleville Tribe and thank all the participants for
3 being very diligent, for, I think, coming up with some
4 creative solutions.

5 We certainly like settlements, and we think that
6 everyone benefits, and, in this case, it's clear that
7 everyone got them, so, thank you and welcome.

8 CHAIRMAN WOOD: I'd like to echo those sentiments
9 and say welcome to the folks from far away. We're glad to
10 have you here in Washington.

11 Thank you, Nora, for pointing that out.

12 The item that we just voted to waive the Sunshine
13 Act for was a brief supplemental policy statement,
14 supplemental to the one that we issued in April of last
15 year, which was, itself, issued in response to the March
16 2004 report of the U.S.-Canada Binational Task Force on the
17 August 2003 Blackout across the Northeastern North America.

18 And at that time, we issued a policy statement
19 that explained, among many other things, that the Commission
20 interpreted the term, "good utility practice," in our
21 transmission tariffs that all FERC-jurisdictional utilities
22 have under Order 888, that compliance with reliability
23 standards developed by the North American Electric
24 Reliability Council, known as NERC, is the touchstone that
25 we look to for good utility practice.

1 Yesterday, the NERC Board of Trustees approved
2 the version, what they call the Version 0 Reliability
3 Standards, which was the first conversion of those standards
4 from the more informal compliance template-based processes
5 that have been used in the voluntary organization for the
6 past four years, to actual rules, regulations.

7 There are 90 discrete rules yesterday that were
8 adopted by the Board, after a full ANSI-accredited process
9 that involved balloting, involved stakeholder participation,
10 was actually quite an impressive project for a stakeholder
11 process to get through.

12 And I know we look at stakeholder processes in a
13 number of things, including a few Orders on today's agenda,
14 but this was one that I was very pleased to see work
15 expeditiously.

16 This project was planned, originally, to be done
17 by December of 2006, to be adopted in February of 2007, and
18 I think that due to the intense focus that our Commission
19 and all of us, including our Staff, have put on these
20 standards, that, with or without legislation, we're going to
21 need to have standards that basically say this is good and
22 this is not good.

23 And the consequences for not being good are, you
24 -- fill in the blank -- pay penalties, can't get money from
25 Wall Street, have a scarlet letter by your name, you know,

1 make some restitution to customers and what have you.

2 But that has not been established before
3 yesterday. These will be implemented on April the 1st, and
4 really today's Order is just more of a, quite frankly,
5 symbolic reminder that reliability is very important, and
6 there are now for the first time in history, some
7 enforceable, crisp standards that can be used by the
8 industry to move forward and make sure that reliability is
9 not a lowest common denominator type factor, but moves
10 towards best practices.

11 We heard a lot of interesting -- yesterday, I
12 heard a lot about best practices, that these reliability
13 audits -- Joe was there with me yesterday, as well. There
14 are a lot of good best practices that are coming out of the
15 reliability audits that --

16 We had some concerns about the audit process, but
17 the nice thing that came from it, which we heard a little
18 bit of back in the Fall when we had our review of this
19 process, were that a number of utilities, big and small, are
20 doing very good things.

21 And so the spotlight was focused in a carrot, as
22 opposed to a stick sense, on really a lot of utilities
23 yesterday on various items that they are doing, based on
24 tools, on training, on the type of operational parameters
25 that are being used and kind of techniques that their

1 operators are having.

2 So, anyway, that's a side part from this brief
3 policy statement today, which is just an acknowledgement
4 that, in fact, what had been loose NERC standards before
5 now, have a specific, immeasurable end point, and so this
6 Order simply reflects that now the good utility practice
7 equals compliance with NERC Version 0.

8 It's my hope and expectation that our informal
9 relationship with NERC will be solidified by passage of
10 legislation that incorporates the reliability language that
11 we've looked at for probably half a decade now.

12 But it's my hope that that will get done,
13 hopefully this year, and that we can move on to a more
14 formal relationship with NERC. But I just want to report
15 back from having been up there yesterday.

16 I think what we're doing in the interim here, is
17 working and is moving in a very pro-customer, pro-
18 reliability direction, and I'm glad to see us kind of weigh
19 in behind that effort and give them an at'a'boy, as well,
20 kind of put the industry on notice that these new standards
21 are not just nice packets that NERC does, but they're what
22 we look to and what I expect the outside customers and Wall
23 Street and the others look to for determining what utilities
24 are observing good utility practice.

25 COMMISSIONER KELLY: Pat, I'd just like to take

1 this opportunity to thank you for your personal commitment
2 to achieving, and you've been very generous in saying that
3 it was the Commission working with NERC that has achieved
4 this.

5 I think that is, indeed, correct, but it's
6 because it's been your number one goal, and you've achieved
7 it, and I know that it wouldn't have happened, if it hadn't
8 been for you being there and being the voice and the
9 reminder of how important it was, it is to the country, that
10 this be accomplished. Thank you.

11 CHAIRMAN WOOD: You're very kind.

12 COMMISSIONER KELLY: It's a great effort on
13 behalf of the country.

14 CHAIRMAN WOOD: Thank you. Well, that's over-
15 broad, but they did get a limerick for all their hard work
16 yesterday, so I'll share that with you later.

17 (Laughter.)

18 CHAIRMAN WOOD: Limericks are given out very
19 sparingly, because I'm not that poetic.

20 (Laughter.)

21 COMMISSIONER BROWNELL: I'd like to join Sudeen.
22 I think that's right; I think this is a case where
23 leadership made a difference. I'd also like to thank you
24 and Congress for funding the creating of the Reliability
25 Office, which --

1 CHAIRMAN WOOD: Amen.

2 COMMISSIONER BROWNELL: -- I think brings that
3 independent view of the world that has guided some of the
4 decisions in these standards and will continue, I think, to
5 push up the bar in terms of identifying technologies that
6 control areas must have, identifying continued best
7 practices.

8 I would hope that this is a first step, but not
9 the last step, and that we look at this as an opportunity
10 for continuous improvement, because I think the very issues
11 that reliability addresses, also have security implications,
12 something that's on all of our minds, all of the time.

13 So I'd like to thank Joe McClelland and the team
14 for a really fast start and a great addition to our team.
15 Thank you.

16 CHAIRMAN WOOD: I want to add that we are looking
17 and recruiting good engineers and others to come work in our
18 Reliability Division. I think we had good success with that
19 a couple of years ago when Bill was trying to staff up the
20 Market Oversight Division. I want to just make a public
21 announcement, as I do in most every speech that I give, that
22 we are hitting the hostings hard for people that want to
23 come give a few or more than that, years to public service,
24 because it really is a broad-based public interest that
25 reliability is all about.

1 And I'm glad we've got Joe here. He'd be a
2 great boss to work for, and he's a great colleague to work
3 with. I'm proud to have you out there with me, Joe.

4 COMMISSIONER KELLY: Pat, I also wanted to add
5 something that I think we need to keep in mind: Reliability
6 and reliability standards are not a very sexy topic, and
7 it's easy to push engineering issues to the back of the
8 agenda.

9 But for the consumers in America, this issue
10 should be paramount, and we need to remember that the
11 Blackout interrupted lives, seriously, caused deaths, and
12 contributed to the loss of about -- well, we don't know for
13 sure, but between \$4 and \$10 billion of loss to the economy.

14 And so it's not an exciting issue, but it's a
15 very important issue.

16 CHAIRMAN WOOD: Actually, even yesterday, even
17 with all the engineers, it was pretty exciting.

18 (Laughter.)

19 (Discussion off the record.)

20 CHAIRMAN WOOD: Joe, you had some good comments,
21 too, on the broad energy bill, and I was reading those on
22 the plane last night and when I got home, your comments back
23 to the House on that.

24 I thought that the point you raised -- and I'll
25 let you share more on specifically what it was -- but

1 focused on the standards themselves and mentioned that if
2 there's a bad standard, you don't want to have to kind of
3 live with it.

4 One of the things that came out of yesterday that
5 I did want to mention and then forgot, was that NERC is not
6 sitting on this at all. They have already identified and
7 started parallel processes to move forward with
8 cybersecurity standards, with planning standards.

9 There are about 18 planning standards, and that
10 was the only dissent that came to adopting the full package
11 during the process, the accrediting process, came from
12 people who wanted to go ahead and get planning standards.
13 They are kind of specific things, but more -- they are
14 important to us, because, as we look at the long-term health
15 of this grid, not only for reliability, but for commerce,
16 the planning standards that NERC has to do, are subject to a
17 lot more -- given a lot more, I think, anxiety among the
18 community as to where they go.

19 But they're engaged. They've got a process that
20 I think works. It's going to be one that I want us to be
21 staffed up to be able to be fully engaged with, and observe
22 and make sure that it does continue to reflect the public
23 interest.

24 But they've got cybersecurity issues for upgrade,
25 vegetation management standard for initial adoption, because

1 there's not a standard now, and a host of others. But they
2 have identified and have a work plan that the Board adopted
3 yesterday, that lays out where the specific standards are
4 going.

5 These are basically -- the standards are where
6 they are now. They're not moving in that upward direction,
7 yet, except on these identified areas, but, you know, again,
8 I think it's one we're going to want to stay plugged in on,
9 so we understand what they are focused on.

10 Like with NAESB, GISB, the industry is really the
11 best for us to rely on, as far as vetting those competing
12 views, I think. As long as we've got good staff folks
13 participating in that process, we get the benefit of that
14 give and take.

15 I've always been persuaded that the Commission is
16 not the best place to originate those issues. We can
17 referee disputes where people think that a standard doesn't
18 work for competition or what have you, but I do think that
19 those processes that are set up there, and if they are
20 managed well -- and I think this one, particularly, was --
21 can really yield some good results that we like.

22 Joe?

23 COMMISSIONER BROWNELL: Sorry, Joe. I'd miss the
24 opportunity, if I didn't say I think I agree with you that
25 the industry is best suited to develop the standards, I

1 think, with a little encouragement.

2 But I don't think the industry should be giving
3 themselves their own report card. I think the audit process
4 must be more transparent and more independent, so that the
5 customers who are affected in many different ways by the
6 outcomes here, have the assurance that they're getting the
7 best picture of what is actually going on in the industry.

8 So I'm hoping that's the next step. Sorry, Joe.

9 CHAIRMAN WOOD: Joe, I would love for you to kind
10 of mention the stuff you mentioned publicly, because this
11 debate about the reliability statute is of a critical
12 nature, and I think it's probably one of the most important
13 things in the energy legislation. And you had some good
14 thoughts on that.

15 COMMISSIONER KELLIHER: Let me start. I wanted
16 to echo what Sudeen and Nora said about your leadership.
17 We, a year ago, were looking at the reliability standards
18 that seemed to be very unclear, very ambiguous, and
19 arguably, could not be fairly enforced, and we've had --
20 seen more progress over the past year than we have over the
21 past eight or nine years.

22 I mean, it was in '96 that there were two
23 blackouts in the summer of '96, in July and August, and
24 there was very little progress between '96 and yesterday and
25 a year ago, to make the standards fair enough -- to be clear

1 enough to be fairly enforced.

2 But there's been tremendous progress over the
3 past year, and it didn't just happen; I think it happened
4 because you used the bully pulpit successfully and
5 encouraged it along.

6 And I want to encourage NERC for their progress.
7 I've been -- I'm very impressed, and, a year ago, I would
8 not have expected it. But there's another thing that we
9 need for reliability standards to be fairly enforced. We
10 need them to be clear enough to be fairly enforced. We need
11 an enforcer, and I don't think we have that under current
12 law.

13 I did propose a few changes to the reliability
14 provisions in the legislation, which were authored years
15 ago. I mean, this legislation was basically written in '98,
16 perhaps a little bit earlier, but I remember seeing the
17 first versions in '98.

18 And there are a few aspects of it that I think
19 should be reconsidered. One is the penalty provisions.
20 Under the current bill, it basically says the electric
21 reliability organization can impose penalties for violations
22 of the standards.

23 But there's no discussion of any ceiling on those
24 penalties, so it would seem that the electric reliability
25 organization might have unbridled discretion to impose

1 penalties for violations of reliability standards. And I
2 don't really think that's probably appropriate, particularly
3 for a private organization, to have that kind of discretion.

4 Normally, federal law, when it has some kind of
5 penalty provisions, provide some maximum ceiling for civil
6 penalties, so I think, first of all, there probably should
7 be some limit set in the legislation.

8 I also think that the penalties should be applied
9 by the Commission, rather than the electric reliability
10 organization. I mean, the ERO provisions of the legislation
11 are modeled on securities law, on Section 19 of the
12 Securities and Exchange Act, and we've seen some recent
13 experience with the securities exchanges, that suggest that
14 a governmental agency is probably better suited than an
15 exchange to enforce the rules.

16 I think that most people would probably conclude
17 that from the New York Stock Exchange debacle, and I think
18 we should apply the same lesson here. I think it's
19 inherently a governmental function to enforce the rules.

20 I think the organization should develop the rules
21 and they should be submitted to us in the same manner the
22 legislation proposes.

23 But there was one other provision that you
24 pointed to, that, under the legislation, after a provision
25 is established, the Commission could remand a provision back

1 to the electric reliability organization to develop a
2 replacement.

3 And the Commission's finding to remand the
4 standard would be that we believe that it's unjust or
5 unreasonable, unduly discriminatory, or preferential or not
6 in the public interest. So we find a standard, a
7 reliability provision standard that we have adopted, we
8 subsequently find violates that standard, under the
9 legislation, it seems we remand it to the electric
10 reliability organization and it's going to take some time
11 for the develop a new standard -- months, year and a half.
12 I don't know.

13 What happens in that interim period, it seems we
14 either allow an unjust and unreasonable standard to continue
15 to govern the market, or the standard is, in effect, voided,
16 and there's nothing in its place.

17 And I think the Commission should probably have
18 the discretion to establish an interim standard, while the
19 electric reliability organization is developing a
20 replacement, a standard on remand.

21 So, anyway, I know people are supposed to discuss
22 changes to the reliability language, but it was drafted
23 almost a decade ago -- well, eight years ago, and I think
24 it's all right to take a fresh look at it, given that
25 Congress is taking a fresh look at the energy legislation.

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1 CHAIRMAN WOOD: I just thought that was very good
2 stuff. And having come from that milieu the whole day, the
3 past two days, I thought that's important to get out in
4 public. So thanks for that.

5 All right. Let's vote.

6 COMMISSIONER KELLY: Aye.

7 COMMISSIONER BROWNELL: Aye.

8 COMMISSIONER KELLIHER: Aye.

9 CHAIRMAN WOOD: Aye.

10 I'd be willing to say there's a gentleman and I
11 think folks in my job should always recognize, Jerry Colee
12 was the gentleman at the NERC process who is the staff
13 person that led this entire process and he did a lot and a
14 lot of folks over there, the leadership of NERC did a heck
15 of a lot here. It's one thing to kind of be a bully in a
16 pulpit but somebody has to be on the receiving end. And
17 they took that ball and scored a TD. So I wanted to just
18 recognize those people publicly.

19 All right.

20 SECRETARY SALAS: The next item for discussion is
21 a rulemaking proceeding, M-2, Electronic Notification of
22 Commission Issuances. This is a presentation by Wilbur
23 Miller and Brooks Carter and they are accompanied by Kenneth
24 Thomas.

25 (Slides.)

1 But before we hear this presentation, Mr.
2 Chairman and Commissioners, I would like to give you some
3 background information on how this rule came about, given
4 that the legal service of Commission documents is one of the
5 Secretary's responsibilities. So I am particularly pleased
6 to present this kind of rule for your consideration as an
7 integral part of the Commission's efforts to achieve the
8 President's Management Agenda for Electronic Government.

9 Mr. Chairman, in April 2002 under your leadership
10 the Commission began to work on a number of electronic
11 initiatives to give the Commission's external customers an
12 easy way to communicate with the Commission, and, in
13 addition, we sought to facilitate the sharing of agency
14 information among Commission staff and thereby enhance the
15 manner in which we serve the public.

16 We have grouped these electronic initiatives under
17 the name FERC On-Line. And the Office of the Secretary has
18 partnered with the Office of the Executive Director and the
19 Office of the General Counsel in leading the work for the
20 design, development, and implementation of several of these
21 initiatives. And I am extremely grateful to Tom Herlihee
22 and Cindy Marlet for their support.

23 So as a framework for today's presentation on
24 electronic service, I would like to provide a brief overview
25 of FERC On-Line FERC On-Line is the collection of

1 electronic initiatives consisting of e registration, e
2 filing, e service -- which we present for your consideration
3 today -- e subscription, e library, e forms, and e tariffs.
4 And for purposes of this background, I'd like to focus
5 primarily on the first four.

6 E filing is the most established application in
7 this collection. It came into production in November of
8 2000 as a voluntary system for filing compliants, comments,
9 motions, and other eligible documents electronically. In
10 2003, we introduced e subscription, a service by which
11 interested persons choose to receive e-mail notification
12 when a document is filed in a particular docket, whether or
13 not the person is a party to the proceeding.

14 And today you will consider e service, the newest
15 application in this collection. It is a system that, among
16 other things, will replace postal service by the Commission.
17 As we can see on the visual slide now on the screen, e
18 registration is the gateway to these services. E
19 registration, available since August of 2002, gives the
20 person or entity doing business with FERC a user ID and
21 password that provides access to the services I mentioned.
22 And ultimately all documents filed with the Commission
23 either electronically or by paper end up in the Commission's
24 e library for easy access and reference to the public and
25 Commission staff.

1 I must note also that the Commission staff from
2 the Office of Markets Oversight -- Markets, Tariffs, and
3 Rates, they're working with the Executive Director's
4 Information Technology staff to bring about e tariffs and to
5 continue to enhance e forms. These are electronic form
6 systems for filing structure forms data and these
7 initiatives on the one hand will streamline the process by
8 which entities subject to the Commission's jurisdiction meet
9 the regulatory requirements and, on the other hand, the
10 initiatives will provide Commission staff more flexibility
11 in conducting market analysis and oversight.

12 Mr. Chairman and Commissioners, we have been busy
13 in making sure that the Commission is a full and active
14 participant in the President's Management Agenda for
15 Electronic Government. And I would now like to ask Brooks
16 Carter from our Office of the Secretary and Wilbur Miller
17 from the Office of General Counsel to continue the
18 presentation. Brooks will give you detailed figures on e
19 filing activities that have set a solid ground on which to
20 build the e service initiative and Wilbur will present the e
21 service final rule for your consideration.

22 Brooks?

23 MR. CARTER: Good morning.

24 CHAIRMAN WOOD: Good morning.

25 (Slides.)

1 MR. CARTER: If we could go the next slide.

2 Just to give you a little background on our
3 document workload, the Commission receives about 60,000
4 documents annually. Now I know some days it probably seems
5 like more than that to your assistants because a lot of it
6 you actually have to go through. That includes documents
7 that are one or two pages to documents that we call boxload
8 filings that make up three or four boxes and several CR-
9 ROMs.

10 Of that 60,000, 34,000 are currently eligible to
11 be filed electronically. These are various types of
12 motions, comments, complaints, forms, not too many
13 applications at this point, however. In the last 12 months,
14 out of the 34,000 that are eligible, we've actually received
15 about 26,000, which is about 75 percent.

16 Next slide, please.

17 It's the e filing system -- and we have several
18 gateways to get electronic information into the Commission
19 but it's the e filing system that has the most bearing on
20 today's rule. In that system since it sent on-line in
21 November of 2000, we've received 47,000 documents. We are
22 now up to 72 percent of the documents that are eligible to
23 be filed. It's a voluntary system so there's no requirement
24 to file but almost three-fourths of the people who have to
25 make filings that are eligible do so electronically.

1 For motions to intervene -- which again is
2 directly related to these electronic service because that's
3 what creates the service list, 90 percent of those motions
4 are now electronically filed. That's significant for the
5 rule. We expect an increase in both of these percentages in
6 the next two years.

7 Electronic filing has also saved filers a minimum
8 of \$5 million in filing costs. These include the bike
9 couriers, the express mail, the copy costs and those sort of
10 costs that are associated with making a filing.

11 Electronic service will save parties an even
12 greater amount. The reaction I get from people who actually
13 submit the filings a lot of times these are paralegals at
14 law firms and they are also the ones that have to serve
15 documents. I would summarize their reaction as e filing is
16 good, e service will be great. That's how excited they are
17 about it.

18 In addition, parties will be able to serve
19 documents faster and in an electronic format even if the
20 underlying document could not be filed electronically with
21 FERC at this time. And this is a huge benefit to the
22 recipients of the served document.

23 On the last slide, the final chart just reflects
24 the increasing acceptance of electronic filing since we
25 started. There was some reluctance initially to switch from

1 paper to electronic but, as you can see, the percentage of
2 documents that have been filed has risen from 15 percent of
3 the ones that could be filed to over 70 percent now. And we
4 hope that trend continues until we get to virtually 100
5 percent.

6 At this time, I'd like to ask Wilbur Miller to
7 summarize the main points of the order.

8 MR. MILLER: Mr. Chairman, Commissioners, the
9 final rule that's before you for consideration follows the
10 Notice of Proposed Rulemaking that the Commission issued in
11 June of 2004. The NOPR proposed to move to a system whereby
12 Commission issuances and notifications, to the extent
13 practicable, would be delivered to recipients
14 electronically. I'll first outline the revisions that this
15 final rule would make to the Commission's regulations and
16 practices.

17 First of all, for proceedings beginning on or
18 after March 21st, 2005, the Commission would implement a
19 system for maintaining official service lists that include
20 e-mail addresses. To effectuate this requirement, persons
21 making filings in affected proceedings would be required to
22 e register. The e-mail address they use in e registering
23 would be used for the service list, which will be available
24 on line. Persons or entities who are unable to receive e-
25 mails may obtain waivers.

1 Second the implementation of service lists,
2 including e-mail addresses, would permit the Secretary to
3 serve Commission issuances upon service list members by e-
4 mail in proceedings beginning on or after March 21st, 2005.
5 Persons or entities who could not receive e-mail again may
6 obtain waivers. The final rule also would change the
7 default form of service amongst participants in Commission
8 proceedings. Currently the Commission's rules state that
9 service shall be by paper unless participants agree to serve
10 each other electronically. The revisions to the regulations
11 would reverse the presumption by making electronic service
12 the default form of service amongst participants unless the
13 participants agree otherwise. Those without e-mail
14 capability would still be entitled to get paper.

15 The rule would not specify the exact manner in
16 which service may be made. There are several possible
17 methods that could be used for service. One would include
18 sending a link to the document in e library. This could be
19 done by forwarding the acknowledgment e-mail that a person
20 filing electronically receives upon filing. The e-mail
21 contains a link to the document that will still work once
22 the document appears in e library. Other possibilities
23 would include sending the document as an e-mail attachment
24 or making the document available on the website and sending
25 the link to it to the other participants. The rule does not

1 specify which service option must be used among participants
2 because different methods may work better in different
3 situations. The rule does, however, make it the
4 responsibility of the participant serving the document to
5 select a workable method. The rule relies on participants
6 to cooperate with one another in choosing service methods.

7 The one minor revision that the final rule would
8 make is to provide specifically in the Commission's
9 regulations that verification requirements -- which are
10 often satisfied by notarization -- may be satisfied by a
11 statement under penalty of perjury as provided by Federal
12 statute. The will facilitate the filing of signed documents
13 in electronic form. Persons filing such documents will be
14 required to keep a signed original on file until the
15 relevant proceeding is closed.

16 Finally, this rule revises the Commission's
17 regulations to permit electronic forms of notification by
18 the Commission through the various mailing lists that the
19 Commission uses to notify affected persons of hydra power
20 and pipeline matters. These mailing lists vary in nature
21 depending on the type of matter at issue but generally
22 speaking the Commission notifies government authorities,
23 elected officials, tribal authorities, land owners and other
24 potentially affected persons and entities of various
25 developments in these proceedings. The operational details

1 for notifications for all of these various mailing lists
2 have not been defined yet, but the rule provides
3 notification will be made electronically where practical.
4 This will allow Commission staff to ensure that proper
5 notification is made to all potentially affected persons and
6 entities.

7 Now the comments the Commission received in
8 response to the NOPR were uniformly supportive of this
9 Commission initiative. We received two primary types of
10 comments: practical suggestions that the commenters
11 believed would make the new systems and procedures run more
12 smoothly and requested features to enhance the system.

13 A number of suggestions have been incorporated in
14 the final rule. As an example, one concern that some
15 commenters expressed was that spam filters might reject
16 service e-mails. To alleviate these concerns, participants
17 will be instructed to include standardized language in the
18 subject line of service e-mails so recipients can ensure
19 that their filters don't reject the e-mail.

20 With respect to some of the features that
21 commenters requested, we hope to continue adding these and
22 other improvements in the future. For example, one
23 suggested feature we believe would be especially useful to
24 persons practicing before the Commission would be an
25 automated service feature whereby an electronically filed

1 document would automatically be sent to members of the
2 service list, once filed, with no further action by the
3 filer. Commission Staff will explore this and other
4 possible improvements in the days ahead while we assess the
5 implementation of the changes I've just described.

6 And finally I have a public service announcement.
7 There will be a demonstration this afternoon at 1:00 in this
8 room of new features that are being added to enhance the
9 Commission's e filing system. The demonstration will not be
10 broadcast on Capitol Connection. It will last about 15
11 minutes and Commission Staff will be available to answer
12 questions.

13 Thank you.

14 CHAIRMAN WOOD: Thank you, Wilbur, Brooks,
15 Kenneth, Magalie, and everybody that worked to make it
16 happen. I know they're sitting there at their programming
17 desk working on the next feature that we're rolling out.
18 This is great. All I can say without a whole lot of ado is
19 thank you very much. I think the customers benefit from
20 that kind of focus and appreciate the hard work you all put
21 into making this come out as quickly as you did.

22 COMMISSIONER KELLY: I'd like to commend you,
23 too, for the flexibility and for the attention to detail
24 that you undertook. For example, having the various methods
25 of service through the weblinks or through the attached

1 document or having it linked to the e filing shows how much
2 effort you put into it to really make this work for the
3 consumers. Thanks very much.

4 COMMISSIONER BROWNELL: I'd like to ask note the
5 comment that you received comments from people who've added
6 value. And I think often people perceive the NOPR process
7 as kind of the final decision and don't really engage in a
8 positive way. So I just think this is a great example of
9 how we can work together to improve a product. And we had
10 an opportunity to visit the filing room yesterday where
11 Brooks, in spite of all of this, also hosted a Mardi Gras
12 party and taught us how to eat crawfish. So you get a real
13 feeling of how overwhelming that paper can be, at the same
14 time we had a wonderful parade. Thank you, Brooks.

15 CHAIRMAN WOOD: Get your beads?

16 COMMISSIONER BROWNELL: Yeah, I got my beads.

17 CHAIRMAN WOOD: Good.

18 COMMISSIONER BROWNELL: I learned how to eat
19 crawfish, too.

20 CHAIRMAN WOOD: You'll have to start walking
21 backwards. It's a Cajun thing.

22 COMMISSIONER KELLIHER: I also support the final
23 rule and I'd just like to start with a revelation, that my
24 introduction to the Commission took place 20 years ago when
25 I was a legal assistant at a DC law firm, so my first

1 introduction to FERC was navigating my way past the liquor
2 store --

3 (Laughter.)

4 COMMISSIONER KELLIHER: -- and the kind of
5 gentleman who buys single beers at 10:00 in the morning and
6 going to the old FERC document room. And I have to say, for
7 all the legal assistants out there, I feel your pain and I
8 want to make your life a better one than mine was. So I'm
9 happy to support the rule.

10 CHAIRMAN WOOD: Let's vote.

11 COMMISSIONER KELLY: Aye.

12 COMMISSIONER BROWNELL: Aye.

13 COMMISSIONER KELLIHER: Aye.

14 CHAIRMAN WOOD: Aye.

15 Thanks.

16 SECRETARY SALAS: The next item for discussion is
17 E-6. This is reporting requirement for changes in status
18 for public utilities with market based rate authority. This
19 is a presentation by Brandon Johnson, who is accompanied by
20 Michelle Barnaby, Melissa Lozano, Jerry Pederson, and Debbie
21 Leavy.

22 MR. JOHNSON: Good morning, Mr. Chairman and
23 Commissioners. Agenda Item E-6 is a draft final rule in
24 which the Commission's standardized market based rate
25 sellers reporting requirement for changes in status. That

1 is events that reflect a departure from the characteristics
2 the Commission relied upon in granting them market based
3 rate authority.

4 When the Commission first granted market based
5 rate authorizations, it required power marketers to promptly
6 notify the Commission of changes in status while allowing
7 traditional utilities to delay reporting of such events by
8 up to three years. The draft final rule is in response to
9 structural changes in the electric industry due to
10 restructuring, corporate alignments, and new types of
11 contractual and subcontracting arrangements which have led
12 the Commission to the conclusion that to carry out its
13 statutory market oversight duty it must receive timely
14 notification of changes in status from all market based rate
15 sellers.

16 For the reason the draft final rule eliminates
17 the currently available option to delay reporting changes in
18 status by up to three years and instead requires that all
19 market based rate sellers report such changes within 30 days
20 after they occur.

21 The draft final rule also provides market based
22 rate sellers with additional guidance regarding compliance
23 with their reporting obligation. First, the reporting
24 obligation -- which was previously included only in the
25 order granting market based rate authorization -- will now

1 be incorporated into the Commission's regulations and into
2 each market based rate sellers tariff. Accordingly the
3 Commission's regulations will be amended to provide that
4 reportable changes in status include but are not limited to,
5 one, ownership or control of generation or transmission
6 facilities or inputs to electric power production other than
7 fuel supplies, or, two, affiliation with any entity not
8 disclosed in the filing that owns generation or transmission
9 facilities or inputs to electric power production or
10 affiliation with any entity that has a franchise service
11 area.

12 Second, the draft final rule provides guidance --
13 excuse me, the draft final rule clarifies that changes in
14 control constitute a change in status and provides guidance
15 as to the types of arrangements, contractual or otherwise,
16 that may confer control.

17 Finally, the draft final rule provides guidance
18 as to the form, content, and timing of the change in status
19 filing and explains that, consistent with current Commission
20 practice, such filings are compliance filings subject to the
21 generally applicable rules for processing compliance
22 filings. The draft final rule does not, however, change the
23 applicable standard for events that constitute a change in
24 status. The standard is and will remain that to the extent
25 that the change in status in question would have been

1 reportable in an initial request for market based rate
2 authority, a change in status filing is required.

3 The draft final rule will address only the
4 discrete issue of the reporting requirement for changes in
5 status. Broader issues regarding the Commission's four-part
6 test for market based rate authority will be addressed in
7 the generic rulemaking in Docket Number RM04-7.

8 Thank you.

9 CHAIRMAN WOOD: Thank you, Brandon.

10 Any questions or feedback for Staff on this one?

11 COMMISSIONER KELLIHER: I support the final rule
12 and I just wanted to put it in perspective, because it's not
13 just an isolation action the Commission's taking, that this
14 really is just the latest series of steps that we've taken
15 since 2001 to strengthen our market based rate program.
16 First of all, step one was strengthening the reporting
17 requirement, that's embodied in Order 2001. Later -- well,
18 2003 and last year we prohibited market manipulation through
19 the market behavior rules. We subsequently bolstered our
20 generation market power test with both the SMA and then the
21 interim test established last year, and we reopened our
22 entire market power test through the rulemaking. This is
23 really the fifth step the Commission has taken since 2001 to
24 strength the market based rate program with an eye to
25 preventing unjust and unreasonable rates in wholesale power

1 sales. So today we're further strengthening the reporting
2 requirement that was so important to the court in the
3 Lockyear decision.

4 And I want to commend the Staff. We received a
5 lot of comments on the proposed rule and I think the staff
6 proposed very elegant solutions to the comments that we
7 received.

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1 There as another change, as the Staff outlined,
2 to more clearly define the events that trigger the reporting
3 requirement. And the final rule does seek to avoid imposing
4 excessive reporting burdens on parties.

5 And there are a couple of important changes to
6 the final rule that I just wanted to mention briefly: One
7 is that the final rule includes control, as the Staff
8 indicated, as well as ownership of assets as a factor to be
9 reported to the Commission.

10 The rule also establishes a 100-megawatt
11 materiality threshold for increases in ownership or control
12 of generation.

13 And the final rule includes a non-exclusive list
14 of events that would trigger a reporting requirement, in
15 order to provide greater regulatory certainty.

16 The reporting requirement necessarily mirrors our
17 current market power test, and to the extent that that
18 market power test changes, there may be a need, obviously,
19 to change the reporting requirement down the road.

20 So, anyway, I do support the final report, and I
21 commend the Staff for their work.

22 COMMISSIONER KELLY: I'd also like to commend the
23 Staff for their work. It's been very quick. I think it was
24 the beginning of the Fall when we realized that timely had
25 been unobtrusively and quietly defined to mean up to three

1 years. Thank you very much for straightening us out on
2 that.

3 CHAIRMAN WOOD: Can't say more than those two, so
4 I'm going to support the Order, needless to say.

5 COMMISSIONER KELLY: Aye.

6 COMMISSIONER BROWNELL: Aye.

7 COMMISSIONER KELLIHER: Aye.

8 CHAIRMAN WOOD: Aye. Thank you all.

9 SECRETARY SALAS: The final item for discussion
10 this morning is C-1. This is Regulations Governing the
11 Conduct of Open Seasons for Alaska Natural Gas
12 Transportation Projects.

13 It's a presentation by Whit Holden, accompanied
14 by Rich Foley, John Carlson, Stuart Fisher, John Katz, and
15 Rob Cupina.

16 (Slides.)

17 MR. HOLDEN: Good morning, Mr. Chairman and
18 Commissioners.

19 Agenda Item C-1 is a draft final rule which
20 establishes requirements governing the conduct of open
21 seasons for proposals to construct Alaska natural gas
22 transportation projects.

23 On October 13, 2004, Congress enacted the Alaska
24 Natural Gas Pipeline Act, recognizing that the construction
25 of a natural gas pipeline from the North Slope of Alaska to

1 markets in the lower 48 states, is in the national interest
2 and will enhance national energy security by providing
3 access to the significant gas reserves in Alaska to meet
4 anticipated demand for natural gas.

5 The purpose of the Act is to facilitate the
6 timely development of an Alaska natural gas transportation
7 project, which is that pipeline segment extending from the
8 North Slope of Alaska to the Canadian border.

9 Section 103(e) of the Act directs the Commission,
10 within 120 days of enactment of the Act, to promulgate
11 regulations governing the conduct of open seasons for Alaska
12 natural gas transportation projects, including procedures
13 for the allocation of capacity.

14 Section 103(e) also requires that these
15 regulations, one, include the criteria for and timing of any
16 open season; promote competition in the exploration,
17 development, and production of Alaska natural gas; and,
18 three, for any open season for capacity exceeding initial
19 capacity, provide for the opportunity for the transportation
20 of natural gas, other than from the Prudhoe Bay and Point
21 Thompson Units on Alaska's North Slope.

22 This draft final rule fulfills the Commission's
23 responsibilities to issue open season regulations under the
24 Act.

25 The open seasons regulations apply to any

1 application for a certificate or other Commission
2 authorization for an Alaska natural gas transportation
3 project, whether filed pursuant to the Natural Gas Act, the
4 Alaska Natural Gas Transportation Act of 1976, or the Alaska
5 Natural Gas Pipeline Act, as well as to any applications for
6 expansions of an Alaska natural gas transportation project,
7 voluntarily filed by the pipeline.

8 However, the open season regulations do not apply
9 to involuntary expansions, which, under Section 105 of the
10 Act, can be ordered by the Commission at the request of
11 others.

12 In order to meet the 120-day deadline, on
13 November 15th, 2004, the Commission issued its Notice of
14 Proposed Rulemaking, containing proposed Alaska natural gas
15 transportation project open season regulations.

16 Noting that the Commission is required to issue
17 its open season regulations by February 10, 2005, the NOPR
18 calls for written comments to be filed by December 17, 2004;
19 additionally, to develop a record in this proceeding and to
20 facilitate a more focused and meaningful public
21 participation, the Commission held a well-attended technical
22 conference in Anchorage, Alaska, on December 3, 2004.

23 Under the NOPR's proposed regulations, any
24 certificate application proposed Alaska natural gas
25 transportation projects must show that the applicant has

1 conducted an open season that is fully compliant with the
2 open season rules.

3 The NOPR proposed that the prospective applicant
4 provide a 30-day prior public notice, containing an
5 extensive and inclusive list of information intended to
6 allow all interested persons to evaluate whether to
7 participate in the open season, followed by an actual open
8 season period of at least 90 days.

9 This 120-day period was proposed as sufficient to
10 level the playing field for all potential shippers, whether
11 or not they had any advance information relating to the
12 proposed open season.

13 The proposed regulations also allow the
14 prospective applicant to develop and to state in detail, the
15 methodologies for determining the values of bids and for
16 allocating capacity, subject to the requirement, but all
17 capacity allocated in an open season, be awarded without
18 undue discrimination or preference of any kind. These
19 requirements are adopted in the final rule.

20 While the NOPR was silent on the subject of
21 Alaska's instate needs, the draft final rule requires that
22 prospective applicants conduct or adopt a study of Alaska's
23 instate needs and use the study results to design capacity
24 needs for use within the state, design instate delivery
25 points and instate transportation rates, as part of their

1 open season.

2 Moreover, bidding on instate capacity must be
3 conducted independent of out-of-state deliveries during the
4 prospective applicant's open season.

5 In order to further the Commission's goal of a
6 nondiscriminatory open season, the draft final rule applies
7 certain of the standards of conduct requirements of Order
8 No. 2004, including the establishment of an independent,
9 functionally-separate unit to conduct the open season.

10 In addition, the open season notice must identify
11 the prospective applicant's affiliates involved in the
12 production of natural gas in the State of Alaska, and all
13 information about the open season disclosed to any potential
14 shippers, must be made available to all potential shippers.

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1 The draft final rule permits presubscription by
2 active shippers limit to initial capacity only. In order to
3 facilitate the development of an Alaska Pipeline project.
4 However, to ensure that all other potential shippers have an
5 equal opportunity to obtain access to capacity on the
6 project in the open season, all presubscription agreements
7 must be made public within 10 days of their execution and
8 capacity on the proposed project must be offered to all
9 shipper qualified under the same rates, terms, and
10 conditions as contained in the presubscription agreements.
11 If capacity is oversubscribed in the open season and it is
12 not feasible to redesign the proposed project to meet all
13 shippers needs, capacity bid for in the open season will not
14 be reduced but all capacity subject to presubscription
15 agreements will be allocated pro rata.

16 Next slide.

17 In an effort to allow as many potential shippers
18 as possible the opportunity to acquire capacity in the
19 initial open season, the draft final rule adds a new
20 provision requiring that the project sponsor must consider
21 any qualified bids tendered after the expiration of the open
22 season and may reject them only if they cannot be
23 accommodated through economic, engineering, or operational
24 constraints On balance, this should be of benefit to late
25 developing shippers and at the same time provide the sponsor

1 with flexibility in the timing of its open season.

2 The draft final rule also requires that within 10
3 days after precedent agreements have been executed for
4 capacity acquired in the open season, the prospective
5 applicant shall make public on the internet and through
6 press releases the results of the open season, including the
7 names of the prospective shippers, the amount of capacity
8 awarded, and the terms of the agreements. Within 20 days
9 after precedent agreements have been executed, copies of
10 all precedent agreements, as well as copies of any
11 correspondence with bidders whose bids were not accepted,
12 must be filed with the Commission.

13 Next slide.

14 The draft final rule also provides that a
15 prospective applicant must file its open season notice with
16 the Commission for a prior Commission determination that it
17 complies with the open season rules. This must be done 90
18 days prior to the 30 day prior notice.

19 In another new provision, the Commission states
20 that as part of its review of any application of the Alaska
21 Natural Gas Pipeline project it will consider the extent to
22 which the proposed project has been designed to accommodate
23 the needs of shippers who have made conforming bids during
24 an open season as well as the extent to which the project
25 can accommodate low cost expansion and the Commission may

1 require changes in project design necessary to promote
2 competition and offer a reasonable opportunity for access to
3 the project.

4 Next slide.

5 In addition to the regulations issued in the
6 draft final rule and to provide guidance to interested
7 parties on the important subject of expansion rate treatment
8 the Commission finds in the draft rule there should be
9 presumption in favor of rolled-in pricing for expansions up
10 to the point that would cause there to be a subsidy of
11 expansion shippers by initial shippers if any subsidy were
12 to be found.

13 In summary, the approach taken in this draft
14 final rule is to balance the need to allow project sponsors
15 the flexibility to develop and bring to market Alaska
16 natural gas with the equally compelling needs to ensure fair
17 competition, promote the development of natural gas
18 resources in addition to those on the north slope, and
19 consider Alaskan in-state requirements. The draft final
20 rule notes the failure to take this balanced approach would
21 overlook the overall objective of facilitating the timely
22 development of an Alaska natural gas transportation project
23 to bring Alaska natural gas to markets in Alaska and the
24 lower forty eight state.

25 That concludes my presentation. Thank you.

1 CHAIRMAN WOOD: Thank you, Whit.

2 Thoughts folks? This is kind of a big one.

3 COMMISSIONER KELLY: I'd like to thank Staff
4 again for their speedy work in developing a final rule. The
5 legislation directed us to have this developed by tomorrow
6 and we're meeting that deadline.

7 I'd also like to express my appreciation for the
8 broad participation of producers, shippers, consumers, the
9 State of Alaska, the Alaska legislature in their comments in
10 this process. And they have helped us develop a final rule
11 that I think achieves well the objectives of the
12 legislation.

13 I just wanted to summarize some of the things
14 that you have said in a different way. One of the big
15 concerns in the legislation and, too, the State of Alaska is
16 that in-state needs to be met. I thought that when we were
17 in Anchorage we got a very good understanding of the
18 importance of the development of the north slope and other
19 gas-producing areas to the State of Alaska. That -- Alaska
20 cannot access their own resources because the cost is so
21 high to bring it down, just for the Alaska market. But with
22 a national pipeline, a pipeline that goes through Alaska,
23 into Canada, and into the United States provides the
24 opportunity. And Congress has made it very clear that it
25 wants that pipeline to serve Alaska's needs -- and Alaska,

1 indeed, has needs.

2 I think that this final rule does a very good job
3 of ensuring that those needs will be met. In particular, by
4 requiring the study of in-state needs, by specifying that
5 the transportation rate that will apply to in-state delivery
6 of gas will be based on the costs of that delivery -- which
7 the State of Alaska anticipates to be less than the cost
8 that would result -- the rate that would result if the cost
9 of the entire pipeline were taken into account.

10 In addition, the State of Alaska raised concerns
11 about how the pipeline would be designed and if it would be
12 designed sufficiently to meet Alaska's needs, and I think
13 that the proposed rule does a good job of understanding that
14 need, of anticipating the possibility that there are various
15 ways to meet that need -- including a truncated pipeline --
16 and I think is assurances that when we -- that the pipeline
17 should be designed to meet those needs and including
18 providing for two major gas trunkline interconnect points
19 within the State of Alaska. And we have made it very clear
20 that when the pipeline comes to us for certification, we
21 will be reviewing certification to ensure that those in-
22 state needs have been met.

23 In addition, another issue that is very, very
24 important not only to the State of Alaska but to the gas
25 industry and to the service of future gas needs of Americans

1 is the ability of this pipeline to accommodate future needs
2 for capacity. It must serve producers who have proven
3 reserves, as well as producers who currently have unproven
4 reserves but indeed are likely to access more gas reserves.

1 I think we've done a good job in this rule, of
2 accommodating those needs. For example, we have provided
3 that information regarding design and engineering, need to
4 be provided in the open season.

5 The producers who have -- who don't yet have
6 proven reserves, explained to us how important it was for
7 them to be able to participate meaningfully in an open
8 season to have that kind of information, and I think the
9 design and engineering information that we've required, as
10 well as the information in Subsection 34(b), I hope and I
11 believe, will be sufficient to reasonably inform all
12 interested parties, to enable them to participate
13 meaningfully in the open season.

14 We also make very clear that we're requiring that
15 every reasonable effort be made to design a project that not
16 only meets current needs for capacity, but also will
17 accommodate future needs for capacity through low-cost
18 expansion.

19 In addition, we have announced that there will be
20 a rebuttable presumption for the building of expansion
21 capacity. This is not the policy that we have developed in
22 the lower 48 states, but I think it is an appropriate
23 departure from that policy, because the Alaska Natural Gas
24 Pipeline is certainly a different kind of project.

25 This is going to be the only pipeline up there.

1 We're not going to have competing pipelines, and some of the
2 policies that we've developed for the lower 48 industry,
3 have been based on the fact that we have a lot of
4 competition in pipelines.

5 So I think that announcing a rebuttable
6 presumption of rolled-in pricing, is appropriate, and will
7 help accommodate future needs for capacity.

8 And then, finally, the concern that there might
9 be discrimination or preference in the open season, I think
10 we've allayed that concern by requiring that certain
11 standards of conduct of Order 2004, apply to this.

12 We've also specified that any entity that
13 violates the applicable standards of conduct, will be
14 sanctioned severely, including the possibility with regard
15 to any energy affiliate of a project applicant that might
16 violate a standard, that their results of the open season as
17 to them would be voided.

18 So, I, again, want to commend the Staff for the
19 way that it has approached this rulemaking, for the
20 dedication that you have given to it, including working
21 through the holidays, and I'm very pleased with the final
22 rule. Thank you.

23 COMMISSIONER BROWNELL: Well done, eloquent
24 statement. I think the transparency and protections of
25 Alaska's interests that are built into this Order, address a

1 number of the concerns that we heard in Alaska in December.
2 We are going back in June, because we promised ourselves
3 that we would do that.

4 But I am unclear -- and I'm supporting the Order,
5 because I think this project is important to our country. I
6 think it's important to Alaska.

7 But I'm just unclear, how the rebuttable
8 presumption of rolled-in rates avoids the issue of
9 subsidies, which I think Congress was quite clear about.
10 I'm not sure how to overcome it.

11 When we say we'll look at subsidies, but we don't
12 really know what they are, that concerns me, so I don't
13 know, Pat. I know you've thought a lot about this. Maybe
14 you'd want to say something.

15 CHAIRMAN WOOD: Yeah, I did. I was actually
16 walking back with Joe in the snow in Anchorage from the
17 hearing back to the hotel that night, crunching, thinking
18 about how you would -- how do you allow for some sort of
19 roll-in, but yet meet what is in the mandatory section, a
20 requirement that it not result in the old shippers
21 subsidizing the new shippers.

22 And then there was a question that I had asked,
23 knowing that this was kind of bugging all of us -- I
24 remember asking one of the witnesses, who admitted honestly
25 and truthfully that subsidy is kind of one of those words

1 like reasonable, that, you know, really kinds of falls back
2 to the Commission to do.

3 So, that caveat is out there. This rule does
4 not, in the preamble, I think, give any wisdom as to what is
5 a subsidy. It does say in one part that people's -- some
6 Pacific -- who are they? Pacific Star? But one of the
7 people who wrote in comments, said, well, the subsidies are
8 coming from the bennies that Congress gave them in the
9 October 2004 bill with the financial loan guarantees and the
10 accelerated depreciation.

11 We said, fine, you can bring that up at that
12 time, and the Commission, at that time, can determine if
13 that's a subsidy that we ought to factor into this or not.
14 And I think that's probably fair to punt on that. I don't
15 think we could make that call here.

16 But the more fundamental point, I think -- you
17 know, I understand your concern -- is, how do you define --
18 how do you square up the law, and even if you can't fully
19 square it up, how do you create something to rebut?

20 I think that in paragraph -- at least in the last
21 version, 125 or 24, or whatever -- when you get the final
22 rule, y'all can look at that section. This is where the
23 rebuttable presumption comes up.

24 We say that for all the expansions, which don't
25 really apply to this project, but apply probably ten years

1 from now, but affect, I think, people's behavior,
2 participating in what we hope will be an open season in the
3 next year or so, what will be the pricing policy that will
4 be adopted for what is viewed as the next big investment?

5 From 4.5 Bcf to about 6 Bcf capacity, the
6 testimony was pretty clear and everybody I think even
7 objected that that was going to be accomplished through just
8 putting in additional compression and bringing up the
9 pressure up on the pipeline so that you can move more
10 volumes.

11 That maxes out at about six, and so you've got to
12 start building actually redundant parallel pipeline, looping
13 to the original pipe, too, and that's, of course, more
14 costly to do that.

15 The incremental cost of doing that is going to be
16 pretty high, so there was a discussion in the paragraph that
17 I support, that says that as long as the rate of doing all
18 of that, and if you just roll that rate in and charge it to
19 everybody, as long as the rate for doing that does not go
20 above the original rates, so that the rate that was set when
21 it was 4.5 Bcf, which is what I think we'll expect to be the
22 original tenet of the original shippers on the pipeline, as
23 long as the rate doesn't go above that, that wouldn't be,
24 that would raise the question of subsidy.

25 Now, if somebody along the way went down from \$1

1 to, say 70 cents, because the incremental cost of adding
2 them was relatively cheap, bringing the 70 cents up, to,
3 say, a buck, or to a dollar, would, in my mind, not be a
4 subsidy, and I think that's what this rule does say.

5 It leaves open the question of whether it goes to
6 \$1.05 or \$1.10, what you do, and I think that's probably
7 fair and should be looked at by the Commission at the time
8 that comes in, so that's maybe not a full answer to your
9 concern, but that's what I think the real-world impact is,
10 is that if there is some cost reductions that happen between
11 now and the next increments, those are fine, but those are
12 on the table for the future investment, so that you don't
13 have really highly differentiated rates that look like
14 vintage'd rates, that, while we've gotten used to them down
15 here in the lower 48, I think, for the reasons Sudeen
16 mentioned, probably don't make a lot of sense on the
17 pipeline up there, at least don't seem to be consistent with
18 what the statute tells you that the are these different
19 things that they want to accomplish.

20 One of them is to develop the additional
21 resource. I hear your concern. I do think it is important,
22 as this process begins, however, to send a relatively clear
23 signal that at least -- and this is going to be a very --
24 this is going to be probably two generations of
25 Commissioners later where we are, that decide these

1 incremental expansions.

2 But I do think it's going to affect, very much on
3 day one, who plays and how they play in the very, very
4 important open season, and I do -- I'm very mindful of not
5 trying to take steps here throughout this rule that, you
6 know, make some parties just walk away from the table.

7 I mean, I think this is -- we didn't do anything
8 here that makes somebody just pull away and say the hell
9 with it; I'm not going to play in this game. This is a very
10 playable game; this is a very, I think, thoughtful process.

11 We did, I think, change significantly from where
12 we started, not particularly in a given direction, although
13 just, I think, by more crispness and more detail, to kind of
14 reduce what I think was probably some -- maybe founded on
15 history. I think I heard enough of what happened bad on
16 TAPS, that people don't want it to spill over into the gas
17 arena, but I hope we've tamped down some of the paranoia
18 about how this is going to play out, in that Alaska will be
19 treated fairly, the big producers will be treated fairly,
20 the little producers will be treated fairly, the customers
21 will be treated fairly and the investors in the pipeline
22 will be treated fairly and the state will be treated fairly.

23 There were a lot of balancing things here, and I
24 think that the pricing issue is one, and I do think we had
25 to weigh in on it. Although I know there were some parties

1 that said, you know, do that in some other forum, I do think
2 it's helpful, though, to weigh in now.

3 If that's not the right answer, I'm sure we'll
4 hear.

5 COMMISSIONER BROWNELL: I think it's a very
6 difficult issue, and I appreciate the need to create as much
7 certainty and clarity in this as we possibly can, because
8 this is a major project.

9 I just want to make sure that in our desire to do
10 that, that we fully appreciated the consequences. I think
11 the State of Alaska, in its filing, suggested that perhaps
12 this was such a big issue, that we wanted to handle it in a
13 separate hearing, and I just will be interested to hear from
14 people.

15 I am supporting the Order, but I want to be
16 certain that we understand in some detail, the implications
17 of this decision. Alaska is unique; there is not going to
18 be competition; all of that is true.

19 We were asked to really consider that unique set
20 of circumstances, which I think we've done, but, I also want
21 to consider the real-world consequences of this decision, so
22 I look forward to the comments, and I appreciate the efforts
23 that we've all gone to, to kind of flesh this out this week.
24 But I feel there's more to be known here, and that's
25 important for me.

1 CHAIRMAN WOOD: I think we'll hear it. The short
2 timeline that we had to adopt this rule, necessitates that
3 we are going to probably hear some things on rehearing that
4 you would otherwise hear in the normal NOPR process. I
5 think we've got to be open to hear what people have to say
6 on that, and we will turn that around quickly, too, so that
7 we don't stand in the way of a potential open season.

8 COMMISSIONER BROWNELL: Certainly, I know Sudeen
9 and Joe have given a lot of thought to the rebuttable
10 presumption, so I asked you, but certainly I welcome their
11 opinions, as well.

12 COMMISSIONER KELLIHER: Let me offer it.

13 (Laughter.)

14 COMMISSIONER KELLIHER: I don't think that the
15 rebuttable presumption is inconsistent with the subsidy
16 language, because the subsidy language is in Section 105,
17 and it's supposed to govern involuntary or mandatory
18 expansions.

19 These open season regulations are limited to the
20 voluntary expansions. So, the language about subsidy -- so,
21 here, to me, the central charge here is to come up with open
22 season regulations that promote competition and exploration,
23 development, and production of Alaskan natural gas, and also
24 to assure an opportunity for the transportation of gas other
25 than Prudhoe Bay and Point Thompson.

1 I think that for the reasons we have all
2 recognized, Alaska is different. The policy we developed in
3 the lower 48 is probably inapplicable, because it's
4 designed, in part, to avoid over-building among competing
5 pipelines.

6 We're not going to have competing pipelines. The
7 concern in Alaska is really under-building, rather than
8 over-building, so I really think rolled-in pricing is the
9 right policy, and I think it's more true to the charge we've
10 been given by Congress to promote competition and make sure
11 gas other than Prudhoe Bay and Point Thompson, gets in the
12 pipeline.

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1 That can be left to another day, whenever we
2 issue regulations on the -- governing involuntary or
3 mandatory expansions, we will have to grapple with that, but
4 not today. I also think there's a -- another provision I
5 wanted to highlight in addition to rolled-in -- the
6 presumption in favor of rolled-in rates and that's
7 preapproval, the preapproval of the open season criteria.
8 That's another element that I think is true to the charge
9 that Congress gave us to promote competition and make sure
10 gas -- other than Prudhoe Bay and Point Thompson gets in the
11 pipeline.

12 And I think the parties made a persuasive case
13 that failure to preapprove the open season criteria could
14 result in criteria that disfavors the non-majors and again
15 would be inconsistent with the duty we've been given to
16 promote competition. So I think that -- I think failure to
17 include preapproval would be inconsistent with the fact.

18 I think the parties also made a good case that
19 reliance on the complaint process probably wouldn't suffice
20 to guard against possible discrimination and other flaws in
21 the open season criteria. That's also a departure from our
22 policy in the lower forty-eight for the same reasons we're
23 departing from it with respect to rolled-in pricing.

24 And on contract term, I thought parties made a
25 pretty good argument in favor of adopting uniform contract -

1 - a cap on contract terms. But again that's not something
2 we have to decide right now; that's something that could be
3 decided as we consider the open season criteria. I think --
4 you know, the parties argued that unreasonably long
5 contract terms could disfavor bids by non-majors under the
6 net present value methodology of having a 40 year term would
7 get a higher net present value than a 20 year term. So I
8 think their arguments have merit. And that we do, in this
9 order, in this rule, we do reserve the right to set a
10 contract cap in the future if we think that some of the bids
11 propose unreasonably long terms, particularly terms that
12 bear no relationship to financial instrument to finance the
13 pipeline. So that's another point.

14 And finally, I just want to observe that the
15 Commission does, under current rules, the Commission has
16 authority to hold its own open season. So if in the future
17 we think that progress towards development of an Alaskan
18 natural gas pipeline is not moving at the right pace, we
19 could hold an open season ourselves and determine the level
20 of interest in building a pipeline. So that's something --
21 hopefully progress will be satisfactory, but if it's not we
22 already do have some tools to address that. So I just --
23 that's not within the scope of the rule, but I just wanted
24 to make that observation. But I do support the final rule
25 and I do want to commend the staff -- it's not very often

1 given the strictures of the Administrative Procedures Act
2 that final rules are issued by agencies. But anyway, I just
3 wanted to commend you.

4 And I thought the quality of the comments was
5 very high. It was actually interesting to read them.
6 Sometimes it's horrible, but hit was interesting.

7 (Laughter.)

8 And I obviously found some comments more
9 persuasive than others but they all were of a good quality.
10 So it's been a good process.

11 COMMISSIONER KELLY: I'd just like to add a
12 little bit to the discussion of the rolled-in pricing and
13 the cap. In Section 105, which I know is the section that
14 you're concerned about, Nora, where it states -- this has to
15 do with mandatory expansions, mandatory expansions the
16 pricing cannot result in a subsidy. That same statutory
17 provision does admit and allow us to approach these
18 expansions on either an incremental or a rolled-in basis.
19 So I think there's evidence there that Congress did not rule
20 out the possibility that you could have a rolled-in rate
21 that isn't a subsidy.

22 In addition, when Congress didn't want to see a
23 rate increased -- which is a concern I know that you have
24 and Pat has, that if we look at rolled-in pricing over the
25 long run with greater expansions with looping, we might see

1 the rate increase.

2 In Section 103 of the Act regarding Alaska
3 royalty gas and where Congress specifically gave the
4 Commission the ability to order an expansion to accommodate
5 that gas, Congress in that section said the rate to other
6 shippers shall not be higher as a result. So when Congress
7 wanted to say we don't want to see the rate go up because of
8 an expansion, it did in 103. But it didn't say that in 105.
9 So I think that the -- what I take from those statutory
10 provisions is that indeed the rolled-in pricing can be
11 squared with not having a subsidy, even if the rolled-in
12 pricing were to result in a higher rate. But I do believe
13 that the approach we've taken is appropriate, that we'll
14 determine what a subsidy is when we get the facts in front
15 of us asking us to determine whether or not there's a
16 subsidy.

17 Regarding the cap that Joe mentioned, the cap on
18 terms, length of term. I think that -- as I understand the
19 commenters who asked us to consider imposing a cap on the
20 length of a contract, my understanding is that it was
21 related to how it would affect a net present value and if it
22 lowered a net present value for some shippers who wanted a
23 lower term, that they would be disadvantaged. I think that
24 we've handled that concern in other, more direct ways: by
25 saying that we would like to see the pipeline designed to

1 accommodate future needs and by providing that specifically
2 that we want the pipeline designed to accommodate in-state
3 needs so that capacity and capacity allocation on the basis
4 of net present value shouldn't be a hindrance to the
5 ultimate goals of those kinds of commenters, even without a
6 cap.

7 Thank you.

8 COMMISSIONER BROWNELL: I appreciate both your
9 comments and the thought process that's gone into it and, as
10 I said, I am supporting the order. But I really would like
11 to hear from those who are affected by this, that our
12 interpretation does not, as I said, have unintended
13 consequences. I'm sure if Congress had other intentions, we
14 will hear from them as well and that's as it should be.

15 I just want to comment though in terms of the
16 preapproval and conducting the open season. I think there's
17 a lot of history here. There's a tremendous amount of
18 baggage because of earlier experiences in the TAPS cases.
19 But I think we need to be clear about what the rules are,
20 but not intrude on a business process. Whether we have the
21 skillsets internally, brilliant though we are, to actually
22 conduct our own open season I think is an open question. So
23 I want to be sure we get the rules right -- we protect the
24 interests that I think Alaska is very concerned about -- but
25 we don't intrude and somehow distort what should be a

1 business process. So I think we just need to -- we're
2 walking a fine line here and we need to keep that in mind as
3 we go forward.

4 I would also say that this task was made easier
5 by, as you mentioned, the extraordinary leadership of all of
6 the stakeholders but particularly the governor, the senator,
7 and the legislators. You know, rarely do you go to a state
8 where everybody is agreeing, and they were pretty clear
9 about what they needed to succeed, and I think that helped a
10 lot. But the turnaround time -- maybe we should just do all
11 of rulemakings in this amount of time. Wouldn't that be
12 great?

13 CHAIRMAN WOOD: Whit's going with somebody else.

14 I'll be honest with you and that's something we
15 could learn for the future. But you know, us heading out on
16 the road out there -- I mean, yes, it's good to show the
17 flag but I think it was good for us with our team to be out
18 there together. I think we interacted with folks in a very,
19 what I think is a comfortable setting, just the nice format
20 we had out there, both the informal, you know, contact, as
21 well as the nice format that was provided there by the city.
22 There's something to be said for that.

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1 I think that although the other processes we've
2 had around here have not yielded the best result, I do think
3 there's a better shot at that when we have that sort of
4 format and encourage people to really go to best practices
5 on writing comments, as opposed to the lowest common
6 denominator in just cranking something out.

7 So, I tip my hat to you all a lot. It was fast.
8 I enjoyed our meetings throughout the period of talking
9 through these issues. I think the outcome here is great. I
10 appreciate how engaged we have all been, and the good Staff
11 that we work with every day.

12 I do want to add one specific thing here: I get
13 to exercise this prerogative seldom, but I will use it today
14 to designate that this Order is Order 2005, a designation
15 that we reserve for our landmark Orders to go out of
16 sequence. It would otherwise be back in the 600s
17 somewhere.

18 Like the year 2005, I hope that our Order No.
19 2005, will be remembered as the beginning step that we took
20 and that Congress took to ensure prudent development and
21 delivery of a clean, domestic natural gas resource from our
22 largest state.

23 Getting this pipeline built is the most important
24 thing that we can do today to make sure that we have clean,
25 affordable energy, a decade from now. There is no other

1 thing that we could do, and I think everything that this
2 rule is about, is focused toward making that project a
3 reality.

4 Congress did a huge amount back in late 04. The
5 ball is in our court, and I think that with this well-done
6 rule, we move the ball way down the field. So, let's roll.

7 COMMISSIONER KELLY: Aye.

8 COMMISSIONER BROWNELL: Aye.

9 COMMISSIONER KELLIHER: Aye.

10 CHAIRMAN WOOD: Aye.

11 The meeting is adjourned.

12 (Whereupon, at 12:15 p.m., the open session was
13 concluded.)

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